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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971.

No. 71-313

RAY PAGE, SUPERINTENDENT OF PUBLIC INSTRUCTION, HAROLD O. SWANK, DIRECTOR, ILLINOIS DEPARTMENT OF PUBLIC AID AND JAMES F. REDMOND, GENERAL SUPERINTENDENT OF SCHOOLS OF THE CITY OF CHICAGO, ET AL.,
Petitioners,

vs.

JESSEL WILLIAMS, A MINOR, BY CORNELIA WILLIAMS, HIS MOTHER AND NEXT FRIEND, ET AL.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To: The Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States.

Petitioners, the Illinois Superintendent of Public Instruction, the Director of the Illinois Department of Public Aid, the General Superintendent of Schools for the Board of Education of the City of Chicago and other Chicago public school officials, pray that a writ of certiorari issue to review the order entered in this case on June 9, 1971 by the United States Court of Appeals for the Seventh Circuit which reversed the judgment entered by the District Court in favor of petitioners and remanded the cause for an evidentiary hearing.

OPINIONS BELOW.

The order of the Court of Appeals (Appendix A, *infra*, pp. A1-A2) was not reported. The memorandum opinion and order of the District Court (Appendix C, *infra*, pp. A4-A8) is reported at 309 F. Supp. 814.

JURISDICTION.

The order of the Court of Appeals (Appendix A, *infra*, pp. A1-A2) was entered June 9, 1971. A timely petition for rehearing (Appendix B, *infra*, p. A3) was denied June 28, 1971. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254 (1).

QUESTIONS PRESENTED FOR REVIEW.

Whether the Court of Appeals failure to pass upon the question of constitutional law involved constitutes a serious violation of appellate and judicial procedure, requiring the exercise of the supervisory powers of this Court?

Whether the orders of the Seventh Circuit Court of Appeals of June 9, 1971 and June 28, 1971 constitute a substantial violation by the Court of its duty to apply principles of constitutional law to the stricken complaint itself, rather than to remand the cause for further evidence?

CONSTITUTIONAL PROVISION INVOLVED.

The constitutional provision involved is the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and the Due Process Clause thereof.

STATEMENT OF THE CASE.

While respondents were attending elementary, upper grade center and high schools and about to be graduated from the Chicago public schools in the 1968-1969 school year, they brought this action in the district court for declaratory and injunctive relief and damages under the Civil Rights Act of 1871, 42 U. S. C. § 1983, on their own behalf and on behalf of all others similarly situated. They sued the then Illinois Superintendent of Public Instruction, the Director of the Illinois Department of Public Aid, the Director of the Cook County Department of Public Aid, the General Superintendent of Schools of the City of Chicago and various other Chicago public school officials, petitioners here. Respondents and members of the class were children or adults in families receiving grants under the Illinois Aid to Families with Dependent Children Program. The Board of Education of the City of Chicago was not a party to the action. No issue of race was involved in the case.

Respondents complained that the policy of petitioners which required children or adults of indigent families to pay fees and expenses to participate in extra-curricular activities violated their Fourteenth Amendment rights and Federal civil rights legislation. They claimed that school sponsored or sanctioned social events and other extra-curricular activities (approved by school administrators, teachers and parents) were not available to them on equal terms. Respondents alleged that because they were unable to pay the costs and expenses connected with these activities, they were denied equal protection and due process of law in violation of the Fourteenth Amendment. Respondents conceded that the Department of Public Aid provided up to $8.25 for the rental of caps and gowns to aid recipients. The type of fees and activities that were

in question are shown in the schedule for the June, 1969 graduation at DuSable High School (Exhibit A to the complaint):

Graduation Exercise	$ .50
Dinner Dance	18.00
Announcements	1.40
Yearbook	7.50
Cap and Gown	3.75
Class Gift	.75
Class Ribbon	.65
Contingency Fund	.50
	$33.00

Jurisdiction was predicated upon 28 U. S. C. §§ 1343, 2201, 2202, 2281, 2282 and 2284.

All respondents had, as of August, 1969, been graduated and had received their diplomas without payment of any kind.

The case was heard on the complaint, motions of petitioners to dismiss and the briefs of the parties. The motions to dismiss were sustained by the district court, for the failure of the complaint to state a claim upon which relief could be granted.

On appeal, the court below reversed and ordered the cause remanded to the district court for an evidentiary hearing "upon the related facts in question" since "the precise contours of the constitutional rights which the plaintiffs claim were violated are not readily discernible." Petitioners' request for a rehearing was denied.

It is Petitioners' contention that the Court of Appeals seriously erred when it held that the complaint stated a claim upon which relief could be granted; that it further erred when it held that an action seeking declaratory and injunctive relief and damages could properly be maintained against Petitioners; that it erred when it abdicated

its judicial responsibility to determine the constitutional issue involved and remanded the case even though no substantial factual issue remained to be determined; that it erred when it substituted its own judgment for the discretion of those State officials charged with administering the public school system and system of public aid and instead imposed upon them the court's own views as to what constituted wise economic and social policies.

REASONS FOR GRANTING THE WRIT.

I.

The Action of the Court of Appeals Remanding the Case for an Evidentiary Hearing to "Discern the Contours of the Constitutional Rights" Was an Abdication of the Court's Authority to Review and Was Entirely Unwarranted Since No Additional Evidence Adduced Could Add to or Detract from Respondents Constitutional Rights.

This Court has established the principle that there can be no violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, nor of the Due Process Clause thereof, if every member of the class affected is treated equally.

It is also established by this Court that there is no deprivation of due process or equal protection of the laws, even though some members of the class involved are not financially able to exercise those rights which are conferred upon them by the Constitution and the legislature. The protection afforded by the Constitution of the United States does not constitute a warranty of the economic ability of each citizen to avail himself of the right conferred.

For example, every person has the opportunity under the Constitution to seek an education, provided, however, that

he has the mental ability to qualify him for the education which he seeks. So also, every person has the constitutional opportunity to attend and pursue a college education, to become a lawyer, or doctor, to engage in business, or try to become an athlete. The Constitution, however, does *not guarantee* that he will be financially able to avail himself of these rights.

By its reversal of the district court's decision, the Court of Appeals has erroneously committed to itself the discretion which the law places in the officials charged with the administration of the Illinois public school system and its system of public welfare. As this Court recognized, "The interference of the Courts with the performance of the government, would be productive of nothing but mischief; and we are quite satisfied that such a power was never intended to be given to them." *Decatur* v. *Paulding,* 14 Pet. 497, 516; *Perkins* v. *Lukens Steel Co.,* 310 U. S. 113, 131-132.

This principle is not a mere formality, but it rests upon reasons deeply rooted in the constitutional divisions of authority in our system of government. The order below reflects the impropriety of a judicial interpretation of law at the instance of those who allege, without more, that a constitutional injustice exists solely because of the economic status in which respondents find themselves. Moreover, the order of the Court has nothing to do with education. Petitioners challenge the right of the judiciary to make such interpretation of the Constitution and assert that the Court of Appeals order is an interference with legislative policy and with the administration of the executive branch.

If it be assumed that a high school student desires to play football, but because of the financial requirements of his family he must earn money to defer family expenses and instead operates a newspaper delivery route: Is the State or the public schools then compelled to allow him to

play rather than work and reimburse him for what he would earn by his newspaper route? Competition in athletics, like the graduation ceremony and its accompanying activities, is not the substance of education. The substance of an education is found in the difficult daily work of the classroom and the completion of the academic courses prescribed. All of the respondents have received the education which they sought, none have been denied. To confer upon a dinner dance or class party, the status of a constitutional right is to substitute the form for the substance.

Suppose further, a student, who is a welfare recipient, desires to go to college and has only completed one year of college education. Must the State, contrary to its regulations, pay the entire cost of his education and support so that every student on public aid may complete an entire college course while citizens not on public aid are refused such an opportunity? Such a result would be the logical extension of the Court of Appeals ruling.

In *Dandridge* v. *Williams*, 397 U. S. 471 (1970), under the regulations of the Maryland Department of Public Aid, a total limit of $250 per month in certain counties, and a limit of $240 per month in other counties in the state, was imposed upon a grant that any single family could receive (Maryland Ann. Code, Art. 88A, § 44 A *et seq.* 1969). A family on public aid, consisting of a parent and five children, contended that the youngest child in the family was discriminated against unlawfully because the child did not receive the same public aid as the older children on a *per capita* basis. This Court held that the regulations were not a deprivation of equal protection of the laws under the Fourteenth Amendment.

In *Dandridge* (at pp. 485-6), this Court held:

> "In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely

> because the classifications made by its laws are imperfect. If the classification has some 'reasonable basis,' it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.' * * * 'The problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical, it may be, and unscientific.' * * * 'A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.' * * *
>
> "To be sure, the cases cited, and many others enunciating this fundamental standard under the Equal Protection Clause, have in the main involved state regulation of business or industry. *The administration of public welfare assistance,* by contrast, *involves the most basic economic needs of impoverished human beings.* We recognize the dramatically real factual difference between the cited cases and this one, but we can find no basis for applying a different constitutional standard. * * * It is a standard that has consistently been applied to state legislation restricting the availability of employment opportunities. * * * And it is a standard that is true to the principle that the Fourteenth Amendment gives the Federal courts no power to impose upon the States their views of what constitutes wise economic or social policy." (Citations and footnotes omitted) (Emphasis added.)

The Court below, until its order in the present case, had consistently applied the well settled principle of law that when a motion is made to dismiss a complaint for failure to state a cause of action, and if the plaintiff has not requested the lower court for leave to file an amended complaint but elects to stand upon it and sufficient ultimate facts are not pleaded therein, then the complaint must be dismissed with prejudice.

Here, no legal rights of respondents were shown to have been invaded or threatened. The complaint failed to allege any facts to show an invasion of the private rights of the

respondents or an unlawful classification under the Fourteenth Amendment. On the contrary, respondents seek through judicial action to interfere with the proper exercise by the State of its own internal affairs. The order seeks to impose upon the State of Illinois and its public schools the views of the Court as to what constitutes wise economic and social policy, and if not reversed, constitutes an unwarranted and burdensome intrusion in the affairs of the State and its public schools.

II.

The Court of Appeals Abdicated Its Judicial Duty to Review the Ruling of the District Court.

Petitioners urge that under the well-pleaded facts in the instant case, it was the duty of the Court of Appeals to review the ruling of the district court. That ruling held that as a matter of law even though respondents might not have been financially able to attend an extra-curricular party and dinner dance their economic inability to do so did not constitute a violation of the equal protection of the laws guaranteed by the United States Constitution. The district court further held that it was not an important part of respondents' education required legally or constitutionally to be guaranteed by the State or its agencies.

The Court of Appeals failed to decide the issues in this case. Even if respondents suffered some emotional distress because of their inability to attend an extra-curricular party, such a result does not constitute a deprivation of a federally protected right. Similarly, if a private business is affected to its financial detriment by the application of a constitutional statute, or a classification thereunder, it results in no constitutional violation if the standards used are reasonable and applied alike to all in the class. Accordingly, the fact that an individual member of the class affected may be financially disturbed or emotionally upset is *legally immaterial.* Standards are deemed to be reason-

able and are protected from constitutional challenge if, as applied to the majority of the persons involved in the class involved, they do not work an undue hardship. The fact that they may result in some hardship to a small number of individuals has not been recognized as a ground for holding such standards unconstitutional. The regulations of the Department of Public Aid and the schools are reasonable and give no citizen an unfair advantage over another. *McGowan* v. *Maryland*, 366 U. S. 420, 425; *Morey* v. *Doud*, 354 U. S. 457, 463-464; *Lindsley* v. *National Carbonic Gas Co.*, 220 U. S. 61, 78-79.

In remanding the cause, the Court of Appeals failed to exercise its powers of judicial review even though no substantial issue of fact remained to be tried. Petitioners' motions to dismiss admitted all of the relevant well-pleaded facts. The Court failed to determine whether inability of a student to attend an extra-curricular party due to lack of finances legally and constitutionally imposed upon the State of Illinois the duty to pay the expenses of such student even if such payment would put him in a more advantageous position over those students not aided financially by payment of expenses.

Petitioners believe that unless this Court exercises its supervisory powers to direct the Court below to apply the proper constitutional standards to the facts well-pleaded in the complaint, a chaotic condition will result in that each lower Court will then legislate as to what should be sound economic and social policy in the administration of public schools and welfare systems. Each jury will legislate and pass its own laws. There will be no uniformity of practice or decision; and unequal protection of the laws, both substantively and procedurally will result.

School practices will be judged by varying principles of constitutional law by each individual judge and jury. Different constitutional tests will be applied in each case even if the facts are similar.

The order of the Court of Appeals is an abrupt departure from the consistently prevailing rule of law that upon a motion to dismiss a complaint, the court *itself* must apply the relevant principles of law to the complaint, since by the motion all of the well-pleaded facts are admitted. Further, the order deviates from the well-settled principle of constitutional law that when a legislative body applies a classification equally to all persons in the class, the fact that some individuals may be adversely affected, is constitutionally immaterial. The order of the Court of Appeals constitutes a serious and unwarranted invasion of the legitimate field of legislative discretion, and a grave interference with orderly administration of public education.

Finally, the order below would place substantial financial burdens on both the State of Illinois and the other states of the United States. We do not believe that such administrative and financial burdens should be assumed in the absence of a review by this Court of the order below.

CONCLUSION.

For the reasons stated this petition for a writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX A.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

June 9, 1971.

Before

Hon. LUTHER M. SWYGERT, *Chief Judge*
Hon. ROGER J. KILEY, *Circuit Judge*
Hon. THOMAS E. FAIRCHILD, *Circuit Judge*

JESSEL WILLIAMS, a minor, by CORNELIA WILLIAMS, his mother and next friend, *et al.*,
Plaintiffs-Appellants,

No. 18536 *vs.*

RAY PAGE, Superintendent of Public Instruction; and HAROLD O. SWANK, Director, Illinois Department of Public Aid, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

ORDER.

This action for declaratory and injunctive relief and damages was brought pursuant to the Civil Rights Act of 1871, 42 U. S. C. § 1983, and jurisdiction was claimed under 28 U. S. C. §§ 1343, 2201, 2202, 2281, 2282 and 2284. Upon motion of the defendants and after receiving briefs of the parties, the district court dismissed the complaint and the cause for failure to state a claim upon which relief could be granted.

The complaint alleges that graduation participation is an essential part of a child's education and the complaint may be construed as claiming that in the schools concerned the activities for which the fees are required have been recognized by the school administrators, teachers, parents and students as integral parts of the school experience, from which indigent children are being excluded. Until these and related factual questions are explored at an evidentiary hearing, the precise contours of the constitutional rights which plaintiffs claim were violated are not readily discernible.

As Professor Moore has stated the rule, "[A] complaint should not be dismissed for insufficiency *unless it appears to a certainty that plaintiff is entitled to no relief under any state of facts which could be proved in support of the claim.*" 2A J. Moore, Federal Practice ¶ 12.08, at 2271-74 (2d ed. 1968). This is especially true in actions brought under 42 U. S. § 1983. *Escalera* v. *New York City Housing Authority*, 425 F. 2d 853, 857 (2d Cir. 1970). Applying that standard to the instant complaint, the complaint should not have been dismissed without receiving evidence. The judgment of the district court is reversed and the cause remanded for further proceedings.

APPENDIX B.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

Monday, June 28, 1971.

Before

Hon. LUTHER M. SWYGERT, *Chief Judge*
Hon. ROGER J. KILEY, *Circuit Judge*
Hon. THOMAS E. FAIRCHILD, *Circuit Judge*

JESSEL WILLIAMS, a minor, by CORNELIA WILLIAMS, his mother and next friend, *et al.*,
Plaintiffs-Appellants,

No. 18536 *vs.*

RAY PAGE, Superintendent of Public Instruction, *et al.*,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

IT IS ORDERED by the Court that the petition for rehearing filed in this appeal be and the same is hereby denied.

APPENDIX C.

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division.

JESSEL WILLIAMS, a minor, by CORNELIA WILLIAMS, his mother and next friend, *et al.*,
Plaintiffs,
vs.
RAY PAGE, Superintendent of Public Instruction, *et al.*,
Defendants.
No. 69 C 1297.

MEMORANDUM OPINION AND ORDER.

This action is before the court on defendants' motion to dismiss. Plaintiffs are a group of indigent high school and elementary school students who sue on their own behalf and on behalf of all others similarly situated. The members of the class are children or adults in families receiving grants under the Illinois Aid to Families with Dependent Children Program who are graduating from elementary schools, upper grade centers, and high schools. Defendants include the State Superintendent of Public Instruction, various Chicago school officials, the Illinois Director of Public Aid, and the Cook County Director of Public Aid.

The essence of the complaint charges the defendants with violating the plaintiffs' Fourteenth Amendment rights by maintaining a scheme whereby exercise of a protected constitutional right is made extremely onerous for the poor and relatively easy for the wealthy. Specifically it is claimed that school sponsored or sanctioned social events or other graduation activities are not available to the plaintiffs on

equal terms because they are indigent. An example of the type of fees and activities that are in question can be seen from the schedule for the June, 1969 graduation from DuSable High School.

Graduation Exercise	$ .50
Dinner Dance	18.00
Announcements	1.40
Yearbook	7.50
Cap and Gown	3.75
Class Gift	.75
Class Ribbon	.65
Contingency Fund	.50
	$33.00

Basically, the relief sought is payment for these extra graduation activities by either the schools or the department of public aid. Further plaintiffs demand restitution for fees already paid and damages for being excluded from graduation activities.

Two other facts should be noted before proceeding with a discussion of the legal issues raised by this suit. First, the department of Public Aid provides up to $8.25 for the rental of caps and gowns. Second, all of the plaintiffs have, as of this date, graduated and have received their respective diplomas of graduation.

Jurisdiction is based on 28 U. S. C. 1343(3) (4) and the statute which has allegedly been violated by the defendants is 42 U. S. C. 1983. Declaratory judgment is sought under 28 U. S. C. sec. 2201 and 2202 and a three judge court is requested under 28 U. S. C. 2281, 2282 and 2284.[1]

The nub of the claim under 42 U. S. C. 1983 and under the Declaratory Judgment Act is that one of the plaintiffs'

1. Because of the courts finding that there is no substantial constitutional issue presented in this case it is not necessary to convene a three judge court. *Rose* v. *Brenner*, ... F. 2d ..... (7th Cir. Feb. 4, 1970 No. 17753).

protected rights, privileges or immunities is being transgressed by certain public officials. The defendants argue that the specific claim asserted by the plaintiffs, the right to the extra items and activities attendant to graduation, is not guaranteed by either the federal Constitution or by federal law. Accordingly, the defendants submit that this action should be dismissed for failure to state a claim upon which relief may be granted. The court finds this position to be well taken.

The equal protection of the law does not deny a state the right to make classifications in law where such classifications are rooted in reason. *Griffin* v. *Illinois*, 351 U. S. 12, 21 (1955). Given this general pronouncement of the scope of the equal protection clause it can be seen that the classification inherent in making the rich and the poor pay the same fees for graduation activities is not unreasonable on its face for the state need not equalize economic conditions. Plaintiffs are correct, however, in observing that where the classification imposed by the state tends to deny the individuals, thus set apart, of a protected right then even a classification arguably rooted in reason is often set aside. Thus in *Harper* v. *Virginia Bd. of Elections*, 383 U. S. 763 (1966), the discrimination against the poor inherent in requiring that a poll tax of $1.50 be paid before the franchise could be exercised was held to violate equal protection because "the right to vote is too precious, too fundamental to be so burdened or contained" *Harper* v. *Virginia Bd. of Elections*, *supra*, at 670. Similarly in *Griffin* v. *Illinois*, *supra*, the discrimination against the poor inherent in requiring payment for a transcript in a criminal trial in order to exercise the right to appellate review was held to violate equal protection because the right to stand before the bar of justice was fundamental, citing *Leviticus* C 19 v 15 and the Magna Charta.

The thrust of the plaintiffs' argument is dependent on the claim that the rights asserted in this case fit within the following pronouncement in *Brown* v. *Board of Education*, 347 U.S. 483 (1954):

> In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. *Such an opportunity, where the State has undertaken to provide it, is a right which must be made available to all on equal terms* (emphasis added).

The instant case is distinguishable from *Brown supra* on two grounds. First, in this case the plaintiffs are not being denied the opportunity of an education on equal terms (everyone pays the same fee), rather they are potentially being deprived of free access to extra graduation activities. Second, in *Brown* the classification on the basis of race was repugnant because of separation by color and was without any basis in reason on its face. In the instant case the classification is a function of the disparity of wealth in our society and not the deliberate attempt of a state to set one group apart. Thus it is not unreasonable on its face. As can be seen in the *Griffin* and *Harper* cases, only when the most fundamental rights are impinged upon will the court overturn an otherwise reasonable and equitable procedure which because of the disparity of wealth works a hardship on the poor. The right to a class ribbon or to the school yearbook is not one of our most fundamental rights.

It is possible that a child, from a family whose subsistence depends on public aid may not be able to attend the school sponsored graduation dinner dance because of his or her poverty. This situation must evoke genuine sadness and concern in every socially conscious citizen, but every social malady is not remedied by attempting to invoke the finite guarantees of the federal constitution.

Viewed properly, this complaint must fall, for a scheme which may inadvertently discriminate against poor students as to their right to attend extra graduation activities does not violate the federal Constitution. This court, without a showing of conflict with the federal Constitution or federal law, may not interefere with state activities. Accordingly, this cause is dismissed for failure to state a claim upon which relief may be granted.

ENTER:

ALEXANDER J. NAPOLI,
United States District Judge.

Dated: February 27th, 1970.